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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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CHAD D. SCARBOROUGH

Plaintiff,

v.

LASALLE BANK, et al.

Defendants.

**MEMORANDUM DECISION  
AND ORDER**

Case No. 2:10-cv-0624-CW

Judge Clark Waddoups

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Before the court is Defendants’ motion to dismiss.<sup>1</sup> During the hearing held February 4, 2011, Plaintiff introduced a series of documents he argued supported his claim. The court gave Plaintiff the opportunity to provide these documents to the court, which he did on February 8, 2011. (Dkt. No. 26.) Because over 420 pages were supplied to the court without any briefing or reference to the relevant portions, on February 15, 2011 the court ordered Plaintiff to provide Defendants and the court “all citations upon which he relies in supporting his arguments as raised in his pleadings and at the hearing on February 4, 2011, including specific references to the provisions in the agreement Plaintiff contends support his arguments.” (Dkt. No. 27.) The court also gave “notice of its intent to rely on the documents outside of the pleadings and [intent] to convert the outstanding motion to dismiss to a motion for summary judgment, pursuant to Fed. R. Civ. P. 12(d).” (Dkt. No. 27.) In response to the court’s order, Plaintiff only provided a highlighted copy of the documents “with portions thereof presently believed by plaintiff to be pertinent highlighted in yellow.” (Pl.’s Resp. Order, 1) (Dkt. No. 31). With matters outside of

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<sup>1</sup> (Dkt. No. 4.)

the pleadings now presented and not excluded, the motion is converted to one for summary judgment under Rule 56. Fed. R. Civ. P. 12(d). As much as Plaintiff believes that he “waives no rights to obtain further documents in discovery,” the court has not received an affidavit or declaration requiring additional time for discovery under Rule 56(d), meaning the time for discovery has now passed. *See* (Pl.’s Resp. Order, 2) (Dkt. No. 31). And, because Plaintiff has not provided any briefing to explain how these proffered documents or any other evidence proves his claims, Plaintiff’s action fails.

### **CONCLUSION**

For the reasons stated above, summary judgment is GRANTED in favor of Defendants.<sup>2</sup> Defendants’ motion to strike is DENIED as moot.<sup>3</sup> The action is hereby closed.

DATED this 6<sup>th</sup> day of April, 2011.

BY THE COURT:



Clark Waddoups  
United States District Court Judge

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<sup>2</sup> (Dkt. No. 4.)

<sup>3</sup> (Dkt. No. 12.)